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Written statement* submitted by the Reporters Sans Frontiers International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Counter Terrorism and the right to inform

In his report (A/HRC/28/28) the High Commissioner for Human Rights states that *«States parties to the International Covenant on Civil and Political Rights should ensure that counter terrorism measures are compatible with article 19, paragraph 3 of the Covenant ».*
The same report notes *"in many countries' anti-terrorism laws "have been misused to curb otherwise legitimate activities and to target journalists, human rights defenders, minority groups, members of the political opposition or other individuals, some of whom have been arbitrarily detained and subjected to torture or cruel, inhuman or degrading treatment or punishment while in custody".*
However, in 2014, many States rushed to adopt emergency legislation imposing drastic limitations to the right to impart and receive information.

Ethiopia: three journalists and six bloggers, detained since early 2014 and accused of "organizing themselves into covert sub-groups to overthrow the government by contacting and receiving finance and training from two designated terrorist groups" are facing up to 15 years in prison under the anti-terrorism law. On August 5, 2014, the justice ministry announced that it intended to bring criminal charges against six news publications for "encouraging terrorism and endangering national security".

Syria: the 2012 anti-terrorism law allows prosecutions of journalists on charges of "publishing information about terrorist acts". Since 2012, Mazen Darwish, winner of the 2012 Reporters Without Borders Press Freedom Prize, is detained in Damascus under such charges. His case is representative of the many journalists, netizens and activists held in Syrian jails.

China: bloggers can be imprisoned for their writing, on charges of *'separatism' and 'terrorism'*. This is the case for Uyghur journalists and news providers reporting on crackdowns in Xinjiang.

Cuba: Juliet Michelena Diaz was arrested on April 7 2014, three days before the publication of a by-lined report she wrote for the Miami-based independent news platform *Cubanet* about a case of police violence she had witnessed in Havana. She was charged with « terrorism ». Arbitrary arrests of news providers are used to restrict the flow of information.

The Report also notes that, in some states, legislation has equated legitimate expressions of protest and opposition to the Government with terrorism.

Afghanistan: Syed Rahman Bekore, member of the Afghan Independent Journalists Association, was arrested in April 2014 for allegedly assisting rebel groups and charged with collaborating with enemy countries and terrorists. He was denied the right to see a lawyer and to receive visits from a representatives of journalists' associations and his family.

Egypt: in June 2014, three journalists were given jail sentences ranging from seven to ten years on charges of disseminating false news and belonging to a "terrorist organization".

Worrisome development
According to the same report, *"Some States have enacted broadly formulated national counter-terrorism legislation containing a definition of terrorism that lacks precision and allows for arbitrary or discriminatory enforcement by authorities", reminding Member States that «in its general comment No. 34, the HR Committee specified that offences such as "encouragement of terrorism"*, "extremist activity" or "praising", "glorifying" or "justifying" terrorism should be clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression.

In December 2013, **Russia** added "extremist" content to the list of grounds for blocking websites under the 2012 Internet law. The amendment includes not only inciting hatred and terrorist acts but also participation in unauthorized demonstrations. Shortly afterward, Russia's three main opposition websites were blocked.
The Parliament's lower house voted a series 'anti-terrorism' laws in April that included a telecommunications law requiring people with blogs and social network pages with more than 3,000 visits a day to register under their real name with the communications surveillance agency Roskomnadzor and imposed a ban on content deemed 'extremist nature' or involving state secrets.

Cameroon: the new anti terrorism law, drafted in December 2014, if adopted, would include an extremely vague definition of terrorism, disproportionate penalties and provision to try terrorism cases only in military courts. Journalists who "defend terrorism" orally or in writing are punishable by 15 to 20 years in prison and/or a fine of 25 to 50 million CFA francs

Kenya: a controversial security bill adopted last 19 December states that the dissemination of *"any information (...) relating to terrorism,"* or covering terrorism attacks or publishing images of victims, *"which are likely to cause fear and alarm"*, without prior permission from the police is punishable by *"a fine not exceeding five million shillings [55,600 dollars] or imprisonment for a term not exceeding three years or both."* The law also provides for a jail term of 20 years for anyone convicted of encouraging or abetting terrorist acts via social media.

Jordan: the legislative arsenal developed to combat terrorism in 2014 violates the country's international obligations to respect fundamental freedoms, including freedom of information. The language of the anti-terrorism law adopted in 2006, and amended in 2014, leaves a great deal of discretion to judicial authorities with the resulting danger of producing arbitrary decisions and disproportionate penalties.
In June 2014, terrorism charges were brought against an Amman-based Iraqi opposition TV station *Al-Abasiya*'s owner and 13 journalists for "*using the Internet to carry out acts that exposed Jordanians to attack ».*

Surveillance and cyberceasorship
According to the report "*Broad-reaching surveillance practices have continued to infringe on individuals' human rights (...)Reports show that surveillance practices have had a chilling effect on freedom of expression, particularly affecting journalists whose sources are reportedly less willing to be in contact with the press out of fear that any interaction may leave a digital mark that could be used against them. "*

Authoritarian Governments are not alone in using national security as a pretext. At a February 2014 news conference, *New York Times* investigative reporter James Risen denounced the judicial harassment to which he was being subjected by the US administration and called the United States "an Orwellian state claiming to be the most transparent." Risen was being threatened with imprisonment if he did not identify his source at the trial of a former CIA officer charged under the Espionage Act with leaking information. No fewer than eight whistleblowers have been charged under the Espionage Act in the past six years, compared with just three since its adoption in 1917.
It was in the name of national security that the United States and its National Security Agency established the mass surveillance system whose scale was exposed in June 2013 by Edward Snowden.

Many European countries have anti-terrorism laws that facilitate spying on individuals. Article 20 of the "Military Programming Law" adopted by **France** in December 2013 allows the authorities to bypass the requirement to request permission from a judge when ordering surveillance if the purpose is to protect "national security" or "combat terrorism." A 2014 law reinforcing anti-terrorism measures rounded off these surveillance provisions by reducing journalists' legal protection and by establishing a system for censoring websites without referring to a judge.

In the **UK**, the laws regulating surveillance for the purposes of combating terrorism have led to many abuses. In late 2013, the British police obtained detailed phone billing records of more than 1,700 employees of News UK, the company that owns *The Times*, *Sunday Times* and *Sun*. The *Guardian* recently revealed that emails of journalists with *Le Monde*, *Guardian*, *New York Times*, *Sun*, *NBC* and *Washington Post* were among the 70,000 emails intercepted by the Government Communications Headquarters (GCHQ) in the space of just ten minutes in a 2008 exercise.

In Turkey, dozens of journalists continue to be the targets of arbitrary prosecutions under an anti-terrorism law. Against a backdrop of corruption allegations implicating senior government officials, the surveillance and website blocking powers of the intelligence agency and the High Council for Telecommunications were increased in 2014. Further, a recent amendment added 'national security' to the list of grounds for blocking websites without the judiciary's permission.

It is time for Member States to realize that a demonstration of their own respect for human rights and the rule of law creates a climate of trust and strengthens resistance to threats of violence and radicalism by enlisting the support of all their people in the fight against terrorism.

Recommendations to the HRC

- The HRC must assist Member States in ensuring that anti-terrorism laws and measures are consistent with their international obligations.
- It must monitor Member States to ensure that anti terrorism measures and legislations are not used to restrain freedom of information or target journalists for their legitimate activities.

To Member States

- Member States should carry out broad and inclusive consultations with all relevant stakeholders before adopting counter-terrorism legislation to ensure that it is coherent with relevant international human rights standards.
- They should refrain from carrying out abusive online surveillance and ensure that such measures are fully compliant with relevant international standards and subject to judicial review.
- They should never invoke anti-terrorism or national security as a justification to curtail fundamental freedoms.
- Charges of terrorism charges must never be used to deprive suspects and detainees of their rights such as seeing a lawyer, or guarantees for a fair trial;